

In multi-service situations, a primary serviceman's cost price is determined either by the separately stated selling price of the tangible personal property transferred from a secondary serviceman or if the secondary serviceman does not separately state the cost of goods, it is presumed that the primary serviceman's cost price is 50% of the secondary serviceman's total charge. See 86 Ill. Adm. Code 140.301. (This is a PLR).

December 8, 2000

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of March 14, 2000. We apologize for the delay in our response. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

This is a request for a private letter ruling under the provisions of 2 Illinois Administrative Code Section 1200.110 on behalf of COMPANY. The request is being made to document a filing position for the Illinois Service Occupation Tax in a multi-service situation. A Power of Attorney is attached.

1. COMPANY has disclosed its identity and described its business transactions to fully comply with the requirements of 2 Illinois Administrative Code Section 1200.110. This request is made on behalf of COMPANY for a determination of its Use Tax liability and Service Occupation Tax liability.
2. This Private Letter Ruling is sought to apply to the present period and future periods.
3. There is no claim to be filed and this issue is not under audit by the Department. The Department has audited COMPANY and the Department's position in that audit has prompted this request.
4. COMPANY has not previously requested a letter ruling from the Department.
5. COMPANY specifically requests that all information identifying the parties be deleted from the published version of the letter that will be available to the public.

Statement of Facts

COMPANY is a provider of pest control services. COMPANY is principally located in the State of STATE. In the course of providing its services it enters into national and regional contracts with its customers to provide its services on a continuing basis in several states. In order to fulfill its obligations under these contracts, COMPANY will arrange with local pest control service providers to perform the services for its customers. In effect COMPANY is a primary serviceman and the local pest control service provider becomes a secondary serviceman.

COMPANY charges its customers a monthly fee for services. The secondary serviceman charges COMPANY a fee for its services. No specific price is stated between the parties for the tangible personal property that is transferred to the customer in the course of providing the services to the customer.

The secondary serviceman will use a wide variety of chemicals and insecticides to provide effective pest control services for its customers. Much of the service provided is the identification of the particular pest and the agent most effective to control it in a particular environment. The secondary serviceman will apply different chemicals in different amounts for different customers or even the same customer on different occasions. Specific records as to the exact amount of each chemical applied at each location and the selling prices of such quantities are not maintained.

The secondary serviceman is a de minimus serviceman as the cost price of the chemicals and insecticides transferred in the course of providing the service are very low compared to the price of the services. However, the secondary serviceman will typically also sell these products 'over the counter' in retail transactions. Because of this the secondary serviceman is required to be registered as a retailer under the Retailers' Occupation Tax.

The secondary serviceman will either pay tax on its materials to its vendors or self assess tax on its cost price of materials that are transferred in the course of providing pest control services for COMPANY and its other clients.

The Department's auditors informed COMPANY that it would be liable for Service Occupation Tax measured at one half of the total charges that it pays its secondary serviceman. The basis of this position was that COMPANY could not show a separately stated selling price for the materials and COMPANY and its secondary servicemen were not 'unregistered de minimus servicemen' who could issue certifications that tax had been paid on materials at the secondary level.

Rulings Requested

1. COMPANY believes that any tax liability based upon one half of the charges from its secondary serviceman would wildly overstate its true tax liability. Additionally, a requirement to identify a specific selling price for the small quantities of chemicals applied on a per job basis is very burdensome. In an effort to avoid this situation and remit Illinois tax based upon the true value and selling price of the chemicals transferred in the course of providing pest control services in Illinois COMPANY proposes the following options which it believes will provide it

and the Department with a more ascertainable tax base for the Service Occupation Tax.

2. The secondary serviceman will estimate the total amount of materials that are actually used during a year. This estimate will be based upon the total quantity of materials used in the last year plus estimated growth for the next year. COMPANY will pay the secondary serviceman for those materials before they are applied. Title to the chemical will transfer to COMPANY; however, possession will remain with the secondary serviceman until the materials are transferred to the customers. In effect the secondary serviceman will be applying materials which are owned by COMPANY. The secondary service transaction will only involve labor and services that are not subject to tax.
3. COMPANY will of course have a Service Occupation Tax obligation with respect to this transaction. However, COMPANY believes that it can meet this obligation by paying Use Tax to the secondary serviceman, acting as a retailer when it sold the materials to COMPANY in a transaction separate from any service transaction. COMPANY acknowledges that its secondary serviceman will collect Illinois Retailers' Occupation Tax and local taxes based upon the seller's retail location.
4. Payment between COMPANY and the secondary serviceman will be negotiated between the parties. Several invoice options are under consideration:
 - a. A monthly invoice for 1/12 of the annual estimate.
 - b. A monthly invoice based upon an estimate of materials used in the previous month.
 - c. An annual invoice up front for all materials estimated to be used for the entire year.

Payment for the invoices may be by separate cash payment or by offsetting the invoice amount including tax from the earnings check paid to the secondary serviceman each month.

Contrary Authority

COMPANY is unaware of any Illinois authority contrary to the position that it has requested.

If you anticipate issuing a Private Letter Ruling which does not agree with the rulings requested, I would appreciate the opportunity to meet with you to discuss the issues in greater detail before a ruling is issued.

Please call me if you have any questions.

Your question regards a multi-service, multi-state transaction, in which the primary serviceman (COMPANY) is located outside Illinois and the secondary serviceman is located in Illinois. The secondary serviceman located in Illinois also sells chemicals "over-the-counter." Thus, the liability

incurred by the secondary serviceman when making sales of service is a Service Occupation Tax liability. You further indicate that the secondary serviceman remits Service Occupation Tax based upon his cost price (e.g., it appears he is a de minimis serviceman remitting Service Occupation Tax on the cost price of the tangible personal property transferred incident to service). Your letter does not indicate whether or not COMPANY is registered with the Department, but indicates that COMPANY would meet the Department's de minimis threshold established for service transactions.

Based upon our limited understanding of the transactions described in your letter, we do not believe that COMPANY is likely to incur any Service Occupation Tax liability. However, we do not have sufficient information to issue a Private Letter Ruling on this question. COMPANY does not appear to make any sales of service in Illinois, and cannot thus be considered an Illinois serviceman. Instead, we believe that COMPANY, assuming it is not registered to remit Retailers' Occupation Tax in Illinois, is likely to incur only a Service Use Tax liability, which should be paid to COMPANY's Illinois secondary serviceman.¹ If you wish to obtain a binding ruling regarding COMPANY's liability in these circumstances, we urge you to write to provide additional information about these transactions.

Your letter contains sufficient information for us to issue a Private Letter Ruling to the effect that we find no prohibition for the manner in which you propose to structure your client's activities. You have proposed that COMPANY purchase tangible personal property from an Illinois serviceman who also sells tangible personal property "over-the-counter." COMPANY will remit Use Tax to the Illinois serviceman for this over-the-counter retail sale. The Illinois serviceman will then use that tangible personal property to perform services for your client in Illinois. Since no tangible personal property will be transferred by the Illinois serviceman incident to his sale of service (only labor), neither your client nor the Illinois serviceman will incur any tax liability incident to that service transaction.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Jerilynn Gorden
Senior Counsel, Sales & Excise Tax

JTG:msk
Enc.

¹ If COMPANY or one of its divisions made sales of tangible personal property in Illinois, COMPANY would be required to be registered under Section 2a of the Retailers' Occupation Tax Act, and our conclusions would change. Similarly, if COMPANY or one of its divisions were required to be registered as a "de maximis" serviceman in Illinois, our conclusions would change. If this is the case, COMPANY would be required to collect Service Use Tax on sales to its Illinois customers.